

All communications respecting this  
case should identify it by number  
and names of parties.



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Addr ss: BOX INTERFERENCE  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Telephone: (703) 308-9797  
Facsimile: (703) 308-7953

MAILED

JUN 11 1996

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Applicants: Riggins et al.  
Serial No.: 08/206,405  
Filed: 03/07/94  
For: DYE DIFFUSION PROMOTING  
AGENTS FOR ARAMIDS  
Accorded Benefit: Application  
07/851,781, filed 03/16/92,  
now Patent No. 5,306,312,  
granted 04/26/94 and Applica-  
tion 07/606,572, filed  
10/31/90

The case referred to above has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with other cases hereafter specified. Attention is directed to the fact that this interference is declared pursuant to 37 CFR 1.601 et seq., effective February 11, 1985 (49 F.R. 48416, 1050 O.G. 385). The interference is designated as No. 103,685.

By direction of the Commissioner of Patents and Trademarks and as required by 35 USC 135(c), notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference."

Paper No. 1

Filed by: Fred E. McKelvey  
Senior Administrative Patent Judge  
Box Interference  
Washington, D.C. 20231  
Tel: 703-308-9797  
Fax: 703-308-7953

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

JUN 11 1996

PHILLIP H. RIGGINS and JOHN H. HANSEN,

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Junior Party,

v.

JOHN R. HOLSTEN and NIGEL E. NEELY

Senior Party.

Patent Interference No. 103,685

NOTICE DECLARING INTERFERENCE  
(37 CFR § 1.611)

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties. Details of the applications, patent, count, and claims designated to correspond to the count appear in an "Attachment" to this order.

Judge designated to handle the interference

Senior Administrative Patent Judge Fred E. McKelvey has been designated to handle the interference. 37 CFR § 1.610.

Telephone Conference Calls

Any questions regarding this interference may be made to my office via conference call (703-308-9797) in which counsel for

all parties must participate. It is not my practice to accept telephone calls from one counsel--even on so-called procedural matters.

Conference calls may be arranged through one of the three Administrators who work at the Board of Patent Appeals and Interferences (hereinafter referred to as the "Board"). Those individuals are (1) Merrell C. Cashion, Jr., (2) Amalia Santiago, and (3) Dale M. Shaw. They can be reached at 703-308-9797.

Counsel for the parties are advised that I am normally scheduled to work in the office on Tuesdays and Wednesdays and that I am readily available for conference calls. Moreover, on days on which I am not scheduled to be in the office, counsel should feel free to contact an Administrator. I am generally available and a conference call can normally be arranged.

Delivery of papers to the Patent and Trademark Office

The parties may use the U.S. Postal Service to send papers and other materials related to this interference to the Patent and Trademark Office. When using the U.S. Postal Service, please use the following address:

BOX INTERFERENCE  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231.

The parties may also hand deliver papers and other material to the Patent and Trademark Office. When hand-delivery is used, and when practical for the parties, I would encourage delivery directly to the Board at the following location:

Board of Patent Appeals and Interferences  
Crystal Gateway 2  
1225 Jefferson Davis Highway  
10th Floor  
Arlington, Virginia 22202

An appropriate address to use in the case of a commercial one-day delivery service (i.e., Federal Express) is the Board Crystal Gateway address.

Hand-delivery directly to the Board will (1) minimize the time it takes for a paper or other material to reach me and (2) allow me to render prompt decisions on matters presented to me.

The parties may also forward relatively short papers to the Board via fax at 703-308-7953. If a paper is forwarded by fax, it is not necessary to file a confirmation copy.

Requirement for filing two copies of each paper

When presenting a paper in this interference, each party is required to submit (1) an original and (2) one copy of each paper, the copy shall be marked at the top:

"COPY FOR THE SENIOR JUDGE"

Notice under 35 U.S.C. § 135(c)

Notice is hereby given of the requirement of 35 U.S.C. § 135(c) for filing in the U.S. Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference."

### Lead and backup counsel

On or before June 28, 1996, each party is required to identify in a separate paper a lead counsel and a backup counsel for lead counsel, as well as the mailing address, telephone numbers and facsimile (fax) number for both lead counsel and backup counsel (37 CFR § 1.613(a)). If counsel's address is a Post Office Box, please supply a non-postal box address where Federal Express may be sent by opposing counsel and/or the Patent Office.

Lead counsel and/or backup counsel should file a power of attorney in their client's application or patent files if not already of record under 37 CFR § 1.34(b).

### Notification of entry of orders via the internet

Although all orders entered in this interference are sent to counsel in paper form via mail, fax or Federal Express (as appropriate), I am also willing to forward copies of orders via the internet.

Counsel wishing to receive copies of orders via the internet may supply an E-Mail address as part of the paper identifying lead and backup lead counsel.

I have found that documents formatted in WordPerfect 5.1 (DOS) can be attached to an E-Mail message and downloaded when sent via the internet. An attachment document would be sent via the internet at the same time the paper copy of the document is placed in the Board's outgoing mail box.

### Real party in interest

On or before **June 28, 1996**, each party shall notify the Board in a separate paper of any and all right, title, and interest in any application or patent involved in the interference (37 CFR § 1.602(a)).

All parties are obligated to continually and promptly update changes of the real party in interest.

### Size of paper

All papers (e.g., identification of lead counsel, identification of real party in interest, motions, preliminary motions, preliminary statements, briefs, etc.) filed in this interference shall be on 8½ x 11 paper (with the possible exception of original exhibits); papers of a different size (e.g., A4 or legal size) shall not be filed.

### Holes at the top of papers

All papers filed in this interference shall have two holes punched at the top spaced at 2-3/4 inches apart (each hole spaced equidistant from an imaginary center line running from the top to the bottom of the paper) so that the papers may be placed in interference files maintained by the Patent and Trademark Office.

### Prohibition against presenting duplicate papers

When presenting a paper in this interference, counsel shall not submit with the paper (as an appendix, exhibit, or otherwise) a copy of a paper previously filed in the interference (37 CFR § 1.618(b)).

#### Citation of case law in papers

When citing a decision of a court which is published in the West Reporter System and the USPQ, counsel should provide parallel citations, e.g., Aelony v. Arni, 547 F.2d 566, 192 USPQ 486 (CCPA 1977); In re Deckler, 977 F.2d 1449, 24 USPQ2d 1448 (Fed. Cir. 1992).

#### Copies of file wrappers to opponents

The Clerk of the Board shall forward a copy of the file wrappers of the parties with this notice to all counsel (37 CFR § 1.612(a)).

#### Service of papers by hand or Express Mail

All papers served on opposing counsel in this interference shall be served by Express Mail (a one-day delivery service of the U.S. Postal Service) (37 CFR § 1.646(d)); alternatively counsel may serve opposing counsel using any means which accomplishes a one-day delivery, e.g., by hand, fax, or a commercial one-day delivery service.

#### Conference call to set dates

A telephone conference call to set dates for filing preliminary statements and preliminary motions and for taking such other action as may be appropriate is scheduled for 1:30 p.m. on Tuesday, July 30, 1996 (the call will be initiated from the Patent and Trademark Office).

A copy of a "sample" order relating to the filing of preliminary motions (and related materials) and preliminary

statements accompanies this notice. Counsel are encouraged to discuss the order by phone prior to the telephone conference call.

Headings to be used on papers filed in the interference

In all papers filed with the Board in this interference on behalf of a party, the heading shown in the attached Appendix shall be used.

Notification to the Board of receipt of this notice

Counsel for each party is requested to promptly advise me by letter that the notice declaring the interference was received.

Copies of patents and literature mentioned in each specification (and translations, if available)

On or before July 30, 1996, each party:

(1) shall serve on all opponents a legible copy of every patent and literature reference (and in the case of patents or literature in a foreign language, a translation, if available) mentioned in the specification of the party's involved patent and/or application, and

(2) shall file in the Patent and Trademark Office a notice (without copies of the patents or literature) that it has served the patents and literature as ordered herein.

Copy of specification/claims in electronic form

On or before July 30, 1996, each party is requested to file with the judge assigned to this interference a computer floppy disk (preferably a 3½" high density disk, but 5¼" is acceptable)

containing in a first document on the disk a copy of the party's specification and in a second document on the disk a clean copy of the party's claims as currently worded (for use in an IBM compatible computer in WordPerfect 5.1 for DOS, Microsoft Word 6.0 for Windows, or ASCII format (preferably WordPerfect 5.1 for DOS)).

Comments on requests for extensions of time

The parties are advised that I set times with the view to rendering prompt and timely decisions. Thus, in setting times in this interference, I have taken into account decisions which need to be rendered in this case, as well as other cases. It is true that requests for extension of time are authorized by 37 CFR § 1.645. But, Rule 645 requires a showing of "good cause." Whatever counsel's experience may be in other PTO matters or courts generally, my standard of what constitutes "good cause" is considerably high.

There are few, if any, circumstances where "good cause" can be based on the press of other business arising after a time is set by an order entered in this interference, particularly where a time period is set after conference with counsel. Thus, a matter in another case (i.e., argument or a trial) or an event (i.e., a deposition; client meeting in the U.S. or abroad) scheduled or ordered after a conference call, in which a time is set in this interference, normally will not constitute the press of other business.

Generally, I do not consider an attempt to settle "good cause." While I encourage settlement, and am available to assist in settlement efforts where appropriate, it is my rather firm policy--subject to few, if any, exceptions--that the parties can either settle or meet the next pending deadline.

*Fred McKelvey*

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FRED E. MCKELVEY  
Senior Administrative Patent Judge

Attachment  
(37 CFR § 1.611(c))

The parties involved in this interference are:

Junior Party

Named inventors: Phillip H. Riggins, Greensboro, NC  
John H. Hansen, Greensboro, NC

Application: Application 08/206,405, filed Mar. 7, 1994

Title: Dye diffusion promoting agents for aramids

Assignee: None

Attorneys: George M. Thomas, Esq. Colleen Beard  
George Hopkins Scott Horstemeyer  
James Kayden Steven Kerr  
Scott Sudderth James Vaughan  
David Kelley Steve Risley  
Malvern Griffin Charles Fails  
Jon Jurgovan Geoff Sutcliffe

Accorded Benefit: Application 07/851,781,  
filed Mar. 16, 1992,  
now U.S. Patent No. 5,306,312,  
granted April 26, 1994  
Application 07/606,572, filed Oct. 31, 1990

Address: George M. Thomas, Esq.  
HOPKINS & THOMAS  
Suite 1500  
100 Galleria Parkway, N.W.  
Atlanta, Georgia 30339

Senior Party Application

Named Inventors: John R. Holsten, Rock Hill, SC  
Nigel E. Neely, Spartanburg, SC

Application: Application 08/025,979, filed Mar. 3, 1993

Title: Method for dyeing fibrous material

Assignee: Springs Industries

Attorneys: F. Michael Sajovec, Esq.  
Kenneth D. Sibley  
James R. Cannon  
Samuel D. Layton

Accorded Benefit: Application 07/589,919,  
filed Sept. 28, 1990,  
now U.S. Patent N<sup>o</sup> 5,207,803,  
granted May 4, 1993

Address: F. Michael Sajovec, Esq.  
BELL, SELTZER, PARK & GIBSON  
P. O. Drawer 34009  
Charlotte, North Carolina 28234

For Federal Express (per phone call from the  
Board prior to mailing notice):

F. Michael Sajovec, Esq.  
BELL, SELTZER, PARK & GIBSON  
Suite 310  
3605 Glenwood Avenue  
Raleigh, North Carolina 27612

Senior Party Patent

Named Inventors: John R. Holsten, Spartanburg, SC  
Nigel E. Neely, Rock Hill, SC

Patent: U.S. Patent Nº 5,207,803  
granted May 4, 1993

Title: Method for dyeing aromatic polyamide fibrous  
materials: N,N-diethyl(meta-toluamide) dye  
carrier

Assignee: Springs Industries

Attorneys: F. Michael Sajovec, Esq.  
James D. Meyers  
Samuel G. Layton, Jr.

Accorded Benefit: None

Address: F. Michael Sajovec, Esq.  
BELL, SELTZER, PARK & GIBSON  
P. O. Drawer 34009  
Charlotte, North Carolina 28234

For Federal Express (per phone call from the  
Board prior to mailing notice):

F. Michael Sajovec, Esq.  
BELL, SELTZER, PARK & GIBSON  
Suite 310  
3605 Glenwood Avenue  
Raleigh, North Carolina 27612

Count 1

The process of claim 1 of the Riggins et al. application,  
or  
the process of claim 9 of the Riggins et al. application,  
or  
the process of claim 13 of the Riggins et al. application,  
or  
the method of claim 65 of the Riggins et al. application,  
or  
the fibrous material or fiber of claim 66 of the Riggins  
et al. application,  
or  
the method of claim 67 of the Riggins et al. application,  
or  
the fibrous material or fiber of claim 68 of the Riggins  
et al. application,  
or  
the method of claim 1 of the Holsten et al. application,  
or  
the fabric of claim 12 of the Holsten et al. application,  
or  
the method of claim 15 of the Holsten et al. application,  
or  
the fabric of claim 23 of the Holsten et al. application,  
or

the method of claim 24 of the Holsten et al. application,  
or  
the method of claim 35 of the Holsten et al. application,  
or  
the fibrous material of claim 43 of the Holsten et al.  
application,

or  
the fabric of claim 52 of the Holsten et al. application,  
or  
the method of claim 1 of the Holsten et al. patent,  
or  
the fabric of claim 9 of the Holsten et al. patent,  
or  
the method of claim 10 of the Holsten et al. patent,  
or  
the fabric of claim 14 of the Holsten et al. patent,  
or  
the method of claim 15 of the Holsten et al. patent,  
or  
the method of claim 21 of the Holsten et al. patent,  
or  
the fibrous material of claim 25 of the Holsten et al.  
patent,

or  
the fabric of claim 29 of the Holsten et al. patent,  
or

the fiber of claim 30 of the Holsten et al. patent,  
or  
the fabric of claim 34 of the Holsten et al. patent,  
or  
the method of claim 35 of the Holsten et al. patent.

Representative claims of the parties are set out below

**Riggins et al. application claim 1:**

A process of dyeing poly(m-phenylisophthalamide) fabric comprising:

- (a) dyeing the fabric at a temperature in the range of about 100°C to about 150°C and elevated pressure in a fiber-dyeing solution containing a tinctorial amount of at least one dye and a dye diffusion promoting amount of an aromatic amide having 7 to 14 carbon atoms capable of increasing the swelling value of the fabric at least 1.5% then
- (b) heating the fabric while in contact with the solution until the desired degree of dyeing is attained.

**Riggins et al. application claim 13:**

A process of flame-retardant treating poly(m-phenyleneisophthalamide) fabric comprising:

- (a) treating the fabric with flame retardant at a temperature in the range of about 100°C to about 150°C and elevated pressure in a fiber-treating solution containing a flame-retarding amount of at least one flame retardant and a flame retardant diffusion promoting amount of an amide having 7 to 14 carbon atoms capable of increasing the swelling value of the fabric at least 1.5% then
- (b) heating the fabric while in contact with the solution until the desired degree of flame retardant fixation is attained.

**Riggins et al. application claim 66:**

A fibrous material or fiber of an aromatic polyamide that has been dyed with a dyebath comprising a mixture of a dye diffusion promoting agent and a dye soluble or dispersed with said agent, said agent comprising an aromatic amide having 7 to 14 carbon atoms.

**Holsten et al. application claim 1:**

A method for dyeing fibrous material comprising the steps of:

contacting a fibrous material formed from fibers selected from the group consisting of aromatic polyamide fibers, polybenzimidazole fibers, aromatic polyimide fibers, fibers of copolymers of the monomers thereof, or blends thereof with a dyebath comprising a mixture of a carrier and a dye soluble or dispersed in the dyebath, the carrier comprising an N-substituted aromatic carbonamide or an N,N-disubstituted aromatic carbonamide or mixture thereof; and

heating the fiber while in contact with the dyebath to fix said dye within the fibrous material.

**Holsten et al. application claim 3:**

A method according to [Holsten et al. application] Claim 1 wherein the carrier includes an emulsifier.

**Holsten et al. application claim 5:**

A method according to [Holsten et al. application] Claim 1 or 3 wherein the carrier includes a flame retardant.

**Holsten et al. application claim 12:**

A fabric formed from the fibrous material dyed by the method of [Holsten et al. application] Claim 1 or 3.

**Holsten et al. application claim 43:**

A fibrous material formed from fibers selected from the group consisting of aromatic polyamide fibers, polybenzimidazole fibers, aromatic polyimide fibers, fibers of copolymers of the monomers thereof, or blends thereof which has been dyed with a mixture of a carrier and a dye soluble or dispersed in a dyebath, the carrier comprising an N-substituted aromatic carbonamide or an N,N-disubstituted aromatic carbonamide or mixtures thereof.

**Holsten et al. patent claim 1:**

A method for dyeing fibrous material comprising the steps of:

contacting a fibrous material formed from fibers selected from the group consisting of aromatic polyamide fibers, polybenzimidazole fibers, aromatic polyimide fibers, fibers of copolymers of the monomers thereof, or blends thereof with a dyebath comprising a mixture of a carrier and a dye soluble or dispersed in the dyebath, the carrier comprising N,N-diethyl(m-toluamide); and

heating the fiber while in contact with the dyebath to fix said dye within the fibrous material.

**Holsten et al. patent claim 4:**

A method according to [Holsten et al. patent] claims 1 or 2 wherein the mixture includes a flame retardant.

**Holst n et al. patent claim 30:**

A fiber of aromatic polyamides, polybenzimidazoles, aromatic polyimides, copolymers of the monomers thereof or blends thereof dyed with an aqueous mixture of a carrier and a dye soluble or dispersed in the dyebath, the carrier comprising N,N-diethyl(m-toluamide), an emulsifier, and a flame retardant.

**Holsten et al. patent claim 31:**

A fiber according to [Holsten et al. patent] claim 30 wherein the emulsifier is a blend of the free acid form of a phosphated ethoxylated dialkyl phenol containing from about 2 to 20 moles of ethylene oxide and a non-ionic propoxylated-ethoxylated alcohol containing from about 20 to 75 moles of propylene oxide and 20 to 75 moles of ethylene oxide.

The claims of the parties which correspond to count 1 are:

Riggins et al. application: 1-13 and 65-68

Holsten et al. application: 1, 3-12, 15-19, 23, 24,  
26-32, 35-40, 43, 45-49 and 52

Holsten et al. patent: 1-39

Appendix

Paper No. \_\_\_\_\_

Filed on behalf of: Party \_\_\_\_\_  
By: Name of lead counsel, Esq.  
Name of backup counsel, Esq.  
Street address  
City, State, and Zip-Code  
Tel:  
Fax:

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Senior Administrative Patent Judge Fred E. McKelvey)

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PHILLIP H. RIGGINS and JOHN H. HANSEN,  
Junior Party,

v.

JOHN R. HOLSTEN and NIGEL E. NEELY  
Senior Party.

---

Patent Interference No. 103,685

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TITLE OF PAPER

cc (via Federal Express):

Attorneys for Riggins et al.:

George M. Thomas, Esq.  
HOPKINS & THOMAS  
Suite 1500  
100 Galleria Parkway, N.W.  
Atlanta, Georgia 30339

Attorneys for Holsten et al. (application and patent):

F. Michael Sajovec, Esq.  
BELL, SELTZER, PARK & GIBSON  
Suite 310  
3605 Glenwood Avenue  
Raleigh, North Carolina 27612

Courtesy copy of Notice Declaring Interference with  
(1) sample Order relating to the filing of preliminary  
motions (and related materials) and preliminary  
statements, (2) PTO Form 850 and (3) Rule 609(b)  
statement but without copies of files via First Class  
Mail to:

F. Michael Sajovec, Esq.  
BELL, SELTZER, PARK & GIBSON  
P. O. Drawer 34009  
Charlotte, North Carolina 28234

Enc. Sample Order relating to the filing of preliminary motions  
(and related materials) and preliminary statements

Copies of files

Copy of PTO Form 850, Rule 609(b) statements, and related  
papers

Filed by: Fred E. McKelvey  
Senior Administrative Patent Judge  
Box Interference  
Washington, D.C. 20231  
Tel: 703-308-9797  
Fax: 703-308-7953

eSample

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

@

Junior Party,

v.

@

Senior Party.

Patent Interference No. @

Before: McKELVEY, Senior Administrative Patent Judge.

ORDER--FILING OF PRELIMINARY MOTIONS AND STATEMENTS

A @ hearing/telephone conference call was held on  
@ \_\_\_\_\_ @\_\_, 19@\_\_, at approximately @\_\_:\_\_ a/p.m.,  
involving:

- (1) @ \_\_\_\_\_, Esq., lead counsel for  
@ \_\_\_\_\_;
- (2) @ \_\_\_\_\_, Esq., backup lead  
counsel for \_\_\_\_\_@;

- (3) @\_\_\_\_\_, Esq., lead counsel for  
@\_\_\_\_\_;
- (4) @\_\_\_\_\_, Esq., backup lead  
counsel for @\_\_\_\_\_; and
- (5) Fred E. McKelvey, Senior Administrative Patent  
Judge.

#### Discussion

@insert any relevant discussion not otherwise covered  
herein.

#### Reminders

(1) All papers (e.g., motions, preliminary motions, preliminary statements, briefs, etc.) filed in this interference shall be on 8½ x 11 paper (with the possible exception of original exhibits); papers of a different size, including legal size papers, shall not be filed.

(2) When presenting a paper in this interference, counsel shall not submit with the paper (as an appendix, exhibit, or otherwise) a copy of a paper previously filed in the interference (37 CFR § 1.618(b)).

(3) All papers served on opposing counsel in this interference shall be served by Express Mail (a one-day delivery service of the U.S. Postal Service) (37 CFR § 1.646(d)); alternatively counsel may serve opposing counsel using any means which accomplishes a one-day delivery, e.g., by hand, fax, or a commercial one-day delivery service.

(4) The patent statute (35 U.S.C. § 135(c)) requires the filing in the U.S. Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." Attention is directed to Unisys Corp. v. Commissioner, 1993 U.S. Dist. LEXIS 9157, Civil Action No. 92-1438 (D.D.C. June 30, 1993).

#### Preliminary motions

In accordance with discussion during the @hearing/telephone conference call, the following "Time Periods" are established in this interference:

##### **TIME PERIOD 1**

The time for filing and serving preliminary motions (37 CFR § 1.636(a)) is set to expire on @\_\_\_\_\_.

##### **TIME PERIOD 2**

The time for filing and serving:

- (1) oppositions to preliminary motions (37 CFR § 1.638(a)) and
- (2) preliminary motions pursuant to 37 CFR § 1.633(i) and (j) responsive to a preliminary motion filed by an opponent (37 CFR § 1.636(b))

is set to expire on @\_\_\_\_\_.

##### **TIME PERIOD 3**

The time for filing and serving:

(1) replies to oppositions (37 CFR § 1.638(b))  
and

(2) oppositions to preliminary motions pursuant  
to 37 CFR § 1.633(i) and (j)

is set to expire on @\_\_\_\_\_.

#### TIME PERIOD 4

The time for filing replies to oppositions to preliminary  
motions pursuant to 37 CFR § 1.633(i) and (j) is set to expire on  
@\_\_\_\_\_.

The parties are authorized to stipulate different times  
(earlier or later) for TIME PERIOD 1 and TIME PERIOD 2, provided,  
a written stipulation signed by counsel for all parties,  
including a proposed order shall be filed with the Board as soon  
as practical after any agreement is reached. The parties may not  
stipulate an extension of TIME PERIOD 3 or TIME PERIOD 4.

#### Titles of preliminary motions, etc.

The parties are requested to use one line titles for  
preliminary motions, oppositions, and replies, i.e.,

SMITH PRELIMINARY MOTION 1;

JONES OPPOSITION 1; and

SMITH REPLY 1.

The parties should briefly state in the first paragraph of a  
preliminary motion the precise relief requested. Two examples  
are:

(1) SMITH moves to be accorded the benefit of the filing date of application 07/999,999, filed January 22, 1993 or

(2) SMITH moves for judgment against JONES on the ground that JONES' claims corresponding to the count are unpatentable under 35 U.S.C. § 103 over the combined disclosures of U.S. Patent No. 4,444,444 (Johnson) and French Patent 1,111,111 (Boleau).

The parties are requested to state in the second paragraph of the Exhibits, by exhibit number, relied upon in support of a preliminary motion, opposition, or reply.

Page number limitation on preliminary motion papers

A preliminary motion is limited to twenty (20) pages, not including any certificate of service.

An opposition to a preliminary motion is limited to twenty (20) pages, not including any certificate of service.

A reply to an opposition is limited to ten (10) pages, not including any certificate of service, and shall not raise any issue or rely on any evidence which reasonably could have been made or presented with the preliminary motion.

"Combined" oppositions and replies not to be filed

An opposition shall respond to only a single preliminary motion; "combined" oppositions responding to more than one preliminary motion shall not be filed.

A reply shall respond to only a single opposition;  
"combined" replies to more than one opposition shall not be  
filed.

Requirement for two copies  
of preliminary motion materials

An original and one (1) copy of each preliminary motion,  
opposition, reply, and any evidence submitted pursuant to 37 CFR  
§ 1.639 shall be filed in the Patent and Trademark Office, the  
copy, but not the original, being marked at the top as follows:

"COPY FOR SENIOR JUDGE"

Request for copy of preliminary motions  
in electronic format

Each party is requested to file with the Judge designated to  
handle this interference a computer floppy disk (preferably a 3½"  
high density disk, but a 5¼" disk is acceptable) containing in  
separate documents on the disk an electronic version of each  
preliminary motion, opposition, reply, and affidavit/declaration  
relied upon. The disk should be for use in an IBM compatible  
computer in WordPerfect 5.1 for DOS, Microsoft Word 6.0 for  
Windows, or ASCII format (preferably WordPerfect 5.1 for DOS).  
Presentation of preliminary motions, etc., in electronic form  
will greatly enhance my ability to promptly decide preliminary  
motions.

The disk or disks can be filed along with replies and  
exhibits on @\_\_\_\_\_.

Time and manner of filing exhibits

Exhibits referred to in preliminary motions, oppositions, replies or affidavits should be identified by exhibit numbers (not letters) on a label placed in the lower right-hand corner of the first page of the exhibit. Compare 37 CFR § 1.653(i). If important material is covered by an exhibit label on the first page of the exhibit, a copy of the first page of the exhibit may be reproduced and presented as page 1-a of the exhibit. Exhibits should be labeled, e.g., as follows:

JONES EXHIBIT 1  
Jones v. Smith  
Interference No. @

All original exhibits, including affidavits, should be submitted in an accordion type or other folder containing all exhibits in numerical order (the copy of each exhibit should be submitted in like fashion in a second accordion type or other folder), the idea being that each preliminary motion, opposition, reply or affidavit shall refer to the exhibit by number and it being an objective to avoid the filing of multiple copies of the same exhibit merely because an exhibit is referred to in more than one preliminary motion, opposition, reply or affidavit.

An exhibit, including an affidavit, relied upon in connection with preliminary motions, oppositions, and replies shall be served (but not filed) with the preliminary motion, opposition, reply or affidavit in which the exhibit is first mentioned.

All exhibits, including affidavits, relied upon in connection with preliminary motions, oppositions, and replies

shall be filed together in the Patent and Trademark Office on or before @\_\_\_\_\_.

Affidavits and declarations of expert witnesses

Affidavits and declarations expressing an opinion of an expert used in connection with preliminary motions must disclose the underlying facts or data upon which the opinion is based. See Fed. R. Evi. 705 and 37 CFR §§ 1.639(b) and 1.671(b). Opinions expressed without disclosing the underlying facts or data may be given little, or no, weight.

Hearing on preliminary motions

On or before @\_\_\_\_\_, the parties shall file a paper indicating whether or not they desire oral argument on preliminary motions, it generally being my preference to have oral argument where there are contested preliminary motions.

A date for oral arguments on preliminary motions will likely be in the time period @\_\_\_\_\_ through @\_\_\_\_\_, to be set more precisely in a future order, it being my intention to decide preliminary motions within three (3) weeks of the date of any hearing.

Preliminary statements

The time for filing preliminary statements (37 CFR § 1.621(a), see also 37 CFR § 1.627(a)) is set to expire on @\_\_\_\_\_.

The notice required by 37 CFR § 1.621(b) shall be filed and served on or before @\_\_\_\_\_.

Comments on requests for extensions of time

The parties attention is directed to the "Comments on requests for extensions of time" set out in the Notice Declaring Interference (Paper No. 1).

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FRED E. McKELVEY,  
Senior Administrative Patent Judge